Calendar No. 1024

91st Congress, 2d Session — SENATE — Report No. 91-1020

MILTON KYHOS

July 15, 1970.—Ordered to be printed

Mr. Burdick, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2104]

The Committee on the Judiciary to which was referred the bill (S. 2104) for the relief of Milton Kyhos, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to pay to Milton Kyhos, of Bladensburg, Md., the sum of $1,205 in full settlement of his claims against the United States arising out of costs incurred with respect to the termination of a lease by him incident to a change of official station required by his employment by the Government of the United States.

STATEMENT

The Department of the Treasury is opposed to enactment of the bill. In its report on the bill, the Treasury Department has said:

> The proposed legislation would authorize and direct the Secretary of the Treasury to pay the sum of $1,205 to Milton Kyhos in full settlement of his claims against the United States arising out of costs incurred with respect to the termination of a lease incident to a change of official status required by his employment by the Government of the United States.

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Milton Kyhos is and was at the time in question a special agent in the Intelligence Division of the Internal Revenue Service. In 1967 he was stationed in Cumberland, Md., under the jurisdiction of the district director, Baltimore. Mr. Kyhos alleged that he was informed by Kenneth L. Wilson, his group supervisor, that the Cumberland office would close around July 1, 1967. (The group supervisor denied this allegation.) Mr. Kyhos stated that he relied on the group supervisor's alleged statement and engaged a real estate agent to sell his home in Cumberland. A buyer was found and a contract was signed on May 26, 1967. Mr. Kyhos alleged that shortly after signing the contract to sell the house he was informed by Elmer M. Stapleton, who at the time was the Chief, Intelligence Divsion, Baltimore, that the Cumberland office would not close before December 1, 1967. (This statement is the only evidence offered to prove that Mr. Kyhos was informed by the Chief, Intelligence Division, Baltimore, that the Cumberland office would not close before December 1, 1967. Our records do not indicate this statement was either affirmed or denied by Mr. Stapleton.) On June 10, 1967, Mr. Kyhos signed a lease for 1 year on a townhouse in Cumberland, Md. He alleged that leases for less than 1 year were not available. On June 28, 1967, the contract to sell the house in Cumberland was settled.

The Chief, Intelligence Division, notified Mr. Kyhos by telephone on July 17, 1967, that the Cumberland office would be closed and that he would be reassigned to the Washington, D.C. office. This telephone call was followed on July 28, 1967, by a letter from the district director, Baltimore. The letter notified Mr. Kyhos that he was reassigned to the Washington office starting October 1, 1967.

Mr. Kyhos filed a claim for reimbursement of the expenses of moving from Cumberland to Washington, including $1,100.75 for expenses related to selling his house. The claim for reimbursement of the expenses incident to selling the house was initially disallowed under the Internal Revenue Service's regulations governing employees' moving expenses. Under section 21.023 of the Internal Revenue Service's Manual Supplement 17G–124 (dated January 30, 1967) an employee claiming reimbursement for the expenses of selling a former residence must have been living in the residence at the time he was officially notified of his transfer. Mr. Kyhos appealed the decision to the Comptroller General. The Internal Revenue Service was reversed and Mr. Kyhos was reimbursed $1,100.75 for the expenses of selling the house. (Decision of the Comptroller General No. B–163043, dated January 31, 1968.) The decision stated that "* * * Mr. Kyhos sold his residence in Cumberland only because he believed that his transfer from that place had been definitely decided upon and * * * his transfer was officially ordered shortly thereafter * * *."

Mr. Kyhos later filed a claim for $1,320 for reimbursement of the expenses of terminating the lease on the townhouse in

Cumberland. These expenses were $820 for damages for unpaid rent awarded in a lawsuit to Mr. Kyhos' former landlord and $500 for Mr. Kyhos' attorney's fees. This claim was disallowed under the Internal Revenue Service's regulations governing employees' moving expenses. Under section 21.01 of Internal Revenue Service's Manual Supplement 17G–124 (dated January 30, 1967) an employee is allowed reimbursement of "* * * expenses * * * in connection with the sale of one residence at [the] old duty station * * * or the settlement of an unexpired lease at [the] place of residence at the old station * * *." These regulations were issued pursuant to 5 U.S.C. Supp. IV, 5724a(a)(4), which allows reimbursement of "* * * expenses of the sale of the residence (or the settlement of an unexpired lease) * * *."

This decision was affirmed by the Claims Division of the General Accounting Office. A letter to Mr. Kyhos dated March 11, 1969, from the General Accounting Office explained that the regulations issued under 5 U.S.C. Supp. IV, 5724a (a)(4) allowed reimbursement of either the expenses of selling a former residence or the expenses of settling an unexpired lease at the old station. The letter concluded that "* * * since you elected reimbursement for the expenses required to be paid by you in connection with the sale of your residence at your old official station, there is no basis for the payment of expenses alleged to have been incurred in the settlement of your lease. * * *." In addition, the letter noted "* * * your decision to employ counsel does not obligate the United States to reimburse you for the legal services so obtained since such expenses are considered personal and advisory in nature."

Specific authority to issue regulations is contained in the same legislation providing for reimbursement of the expenses in question. The regulations issued under this authority permit reimbursement of either (but not both) the expenses of selling a former residence or the expenses of settling an unexpired lease. These regulations are not an unreasonable interpretation of 5 U.S.C. Supp. IV, 5724a (a)(4), which is phrased in the disjunctive. Under the statute reimbursement is permitted for "* * * expenses of the sale of the residence (or the settlement of an unexpired lease) * * *."

Moreover, the same regulations, issued pursuant to the same statutory authority, require an employe to be living in the residence at the time he was officially notified of his transfer. These regulations are not unreasonable in providing for official notification as a prerequisite for reimbursement. Official notification is essential in order to prevent the type of confusion illustrated by the events in this case. Even assuming all of his allegations are correct, Mr. Kyhos incurred additional expenses because he acted before he received official notice of the closing of the Cumberland office.

Enactment of the proposed legislation would encourage any employee who felt that the particular circumstances of his situation merited special relief to seek legislative redress of a seemingly inequitable administrative determination even

> though the decision is consistent with uniform standards previously announced by Congress.
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> In addition, enactment of the proposed legislation would be unfair to other employees who have accepted administrative decisions as final adjudications of their claims. In the future, these employees, as well as other employees, would be reluctant to accept an administrative decision as a final determination of a claim.
>
> Finally, ad hoc review and reversal of administrative decisions which are consistent with the legislation and regulations governing employees' moving expenses would yield arbitrary and inconsistent results. The resulting lack of certainty regarding the rules governing employees' moving expenses would make the management of employees more difficult.

The sponsor of the bill, the Honorable Joseph D. Tydings has written the committee as follows:

> Mr. Kyhos was ordered to move from Cumberland, Md., to Washington, D.C., in the spring of 1967 by his superiors in the IRS. Accordingly, he sold his home in Cumberland and was reimbursed for the expenses suffered in the process of sale as provided for by Federal law. Shortly thereafter the IRS reversed itself and requested that Mr. Kyhos remain in Cumberland. Mr. Kyhos rented an apartment with a lease of one year in order to remain in Cumberland. Then, in July, the IRS changed its mind again, ordering Mr. Kyhos to report to Washington. Mr. Kyhos did report to Washington, as ordered, forcing him to leave the lease 8 months before it expired.
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> The relevant Federal law does not permit reimbursement for losses due to moving of Federal employees more than once per year. Thus, although Mr. Kyhos would have been compensated for the losses involving the sale of his house or the losses connected with the apartment, both could not be covered within the same year. Because I feel that the intent of Congress was to reimburse employees under such circumstances and because Mr. Kyhos incurred these losses following the mandatory instructions of his superiors, I introduced the bill to compensate Mr. Kyhos for this unfair situation.

The committee believes that the bill is meritorious and recommends it favorably.

Attached and made a part of this report is a letter dated November 26, 1969, from the Department of the Treasury.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., November 26, 1969.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2104, "For the relief of Milton Kyhos."

The proposed legislation would authorize and direct the Secretary of the Treasury to pay the sum of $1,205 to Milton Kyhos in full settlement of his claims against the United States arising out of costs incurred with respect to the termination of a lease incident to a change of official status required by his employment by the Government of the United States.

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Finally, ad hoc review and reversal of administrative decisions which are consistent with the legislation and regulations governing employees' moving expenses would yield arbitrary and inconsistent results. The resulting lack of certainty regarding the rules governing employees' moving expenses would make the management of employees more difficult.

For the reasons expressed above, the Department is opposed to the enactment of the proposed legislation.

The Bureau of the Budget has advised the Treasury Department that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

PAUL W. EGGERS,
General Counsel.